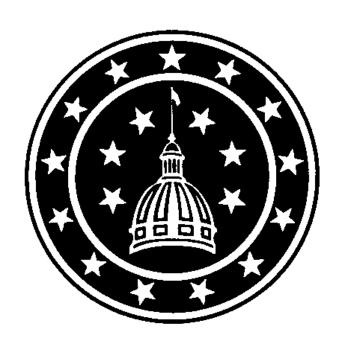
FINAL REPORT OF THE COMMISSION ON COURTS



Indiana Legislative Services Agency 200 W. Washington St., Suite 301 Indianapolis, Indiana 46204-2789

November 2013

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Commission on Courts

Membership Roster

<u>Senators</u> <u>Representatives</u>

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East Chicago South Bend

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Commissioner Therese Brown Judge Tom Felts

Fort Wayne Fort Wayne

Christa Coffey Jerome Prince

Lafayette Gary

Legislative Services Agency Staff

Mark Goodpaster, Fiscal Analyst Timothy L. Tyler, Attorney

November 2013

A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Commission can be accessed from the General Assembly Homepage at http://www.in.gov/legislative/.

FINAL REPORT

Commission on Courts

I. STATUTORY AND LEGISLATIVE COUNCIL DIRECTIVES

The Indiana General Assembly enacted IC 33-23-10 creating the Commission on Courts.

IC 33-23-10-7 charges the Commission with the following:

- 1. Review and report on all requests for new courts or changes in jurisdiction of existing courts.
- 2. Conduct research concerning requests for new courts or changes in jurisdiction of existing courts. The research may include conducting surveys sampling members of the bar, members of the judiciary, and local officials to determine needs and problems.
- 3. Conduct public hearings throughout Indiana concerning requests for new courts or changes in jurisdiction of existing courts. The Commission shall hold at least one public hearing on each request presented to the Commission.
- 4. Review, report on, and make recommendations concerning any other matters relating to court administration that the Commission determines appropriate, including the following:
 - a. Court fees.
 - b. Court personnel, except constables that have jurisdiction in a county that contains a consolidated city.
 - c. Salaries of court officers and personnel, except constables that have jurisdiction in a county that contains a consolidated city.
 - d. Jury selection.
 - e. Any other issues relating to the operation of the courts.
- 5. Submit a report in an electronic format under IC 5-14-6 before November 1 of each year to the General Assembly. The report must include the following:
 - a. A recommendation on all requests considered by the Commission during the preceding year for the creation of new courts or changes in the jurisdiction of existing courts.
 - b. If the Commission recommends the creation of new courts or changes in jurisdiction of existing courts, the following:
 - i. A draft of legislation implementing the changes.
 - ii. A fiscal analysis of the cost to the state and local governments of implementing recommended changes.

iii. Summaries of any research supporting the recommended changes. iv. Summaries of public hearings held concerning the recommended changes.

The Legislative Council assigned the following additional responsibility to the Commission: Adding a magistrate in the Vanderburgh County Circuit Court.

II. INTRODUCTION AND REASONS FOR STUDY

The legislative branch and the judicial branch are separate and co-equal branches of state government. The Commission on Courts was established to give the Indiana General Assembly adequate time to study legislative proposals that will affect the judicial branch.

III. SUMMARY OF WORK PROGRAM

The Commission met five times during the 2013 interim to study court-related issues.

At the first meeting on July 18, 2013, the Commission heard testimony on the following topics:

- 1. A Request for a Magistrate for the Vanderburgh Circuit Court
- 2. Bail Bonds and Pretrial Release

At the second meeting on September 12, 2013, the Commission heard testimony on the following topics:

- 1. Confidentiality of Juvenile Court Records in Juvenile Paternity Cases
- 2. Marion County Court Issues

At the third meeting on September 24, 2013, the Commission heard testimony on two topics:

- 1. Whether courts need more flexibility to appoint psychologists, psychiatrists, or physicians in insanity defense cases without regard to a specific ratio of qualified mental health professionals; and
- 2. Whether court reporters need to receive any type of certification and continuing education

At the fourth meeting on October 8, 2013, the Commission heard testimony concerning the contents of judgement dockets.

At the fifth and final meeting on October 21, 2013, the Commission heard testimony on adoption proceedings and reviewed preliminary drafts and the draft of the final report.

IV. SUMMARY OF TESTIMONY

For a more detailed account, minutes for the Committee can be accessed from the General Assembly Homepage at http://www.in.gov/legislative/

The Commission heard testimony concerning these topics from the following witnesses:

New Magistrate for Vanderburgh Circuit Court

Hon. David Kiely, Vanderburgh Circuit Court, stated the following in support of a magistrate for the Vanderburgh Circuit Court.

- While the 2012 Weighted Caseload Study ranks Vanderburgh County with the fourth highest need of all 92 counties, the severity of need for the Vanderburgh Circuit Court is even higher than the Vanderburgh County average.
- The courthouse in Vanderburgh County has adequate space and just needs to remodeled.
- Both the Vanderburgh County Bar Association and the Vanderburgh Prosecuting Attorney support the need for an additional magistrate

Bail Bonds and Pretrial Release

Sen. Earline Rogers introduced SB 425 and later SR 69 during the 2013 General Assembly to study the issue of pretrial releases.

Les Sebring, United Surety Agents Inc.; Herb Smith, Express Bail Bonds Inc.; Lee Sexton, president of the American Bonding Company; Mike Whitlock, American Surety Company; Barbara Roach, Barbara Roach Bail Bonds; Jim Degan, bail agent; and Kevin Watkins, bail and fugitive recovery agent, testified about the following:

- The role that bail bond agents play in monitoring criminal defendants on pretrial release.
- About 40 counties do not permit surety bonds.
- Criminal courts should have the choice between using cash bonds and surety bonds.
- Permitting cash bonds but not surety bonds is unfair competition for bail agents.

Rick Cockrum, representing the Lake County Commission and Council, explained that Lake County is under a court order to reduce its jail population.

Hon. Robert Freese, Hendricks Superior Court # 1, representing the Indiana Judges Association, made the following remarks about pretrial releases and surety bonds:

- He releases about 99% of defendants on their own recognizance.
- Most failures to appear in court at a later date are not because of willful nonappearance.

 Most defendants prefer the 10% cash bond deposit because they have a chance to get a portion of their money back if they are found not guilty.

Sheriff Ken Campbell, Boone County, represented the Indiana Sheriffs Association. He told the Commission members that county sheriffs will apprehend any person for whom the court has issued an arrest warrant, whether the defendant was released on a 10% cash bond or a surety bond.

Confidentiality of Juvenile Court Records in Juvenile Paternity Cases

Tom Frohman, an Indiana Legal Services attorney, discussed the need to permit records of juvenile paternity cases to be open to the public. During his testimony, he made the following points:

- Parties in juvenile paternity cases (where parents are not married) have a difficult time obtaining files, orders, or schedules related to the case. In contrast, the same information is generally more easily available if the child has married parents and are in the process of divorcing.
- Confidentiality of these cases makes it difficult for both attorneys representing the parties to obtain information in a timely manner.
- Attorneys representing paying clients often charge additional fees to their clients to recover the added costs of going to the courthouse to find relevant information on the case.
- Attorneys who wish to represent indigent clients pro bono may be reluctant to do so because of the added time that it will take them to obtain any relevant information in the courthouse files instead of online.

Melissa Avery, Chairperson of the Indiana State Bar Association's Family Law Section, made the following points:

- The State Bar Association supports the proposed changes in state law that would permit the contents of juvenile paternity cases to be available to the public.
- In the vast majority of the domestic relations cases, the only people interested in the records of the proceedings are the parties in the case.
- The State Bar Association surveyed 23 states concerning the status of juvenile paternity issues. They found that 13 states have open records, 8 have closed cases, and 2 have hybrids.

Marion County Superior Court Issues

Judges David Certo, Heather Welch, and Marc Rothenberg, all of the Marion County Superior Court, discussed the following issues with the Commission members:

- Traffic Infractions A \$35 fine for traffic infractions in Marion County was intended to fund both Marion County's guardian ad litem program and to supplement the salaries of court commissioners. Because fewer traffic infractions are being assessed, money from the fines is not adequate to finance both objectives.
- Consequently, in the next budget year (2015) the superior courts will likely request that some of the commissioners be converted into state-paid magistrates.

Appointments of Mental Health Professionals in Insanity Cases

Steven Ross, Psy.D., Tom Barbera, Ph.D., and Pat McGuffey, representing the Indiana Psychological Association, advocated legislation that would permit criminal courts to appoint psychiatrists, psychologists, or physicians in insanity defense cases without regard to a specific ratio of qualified mental health professionals.

George Parker, M.D., described the value that psychiatrists provide in examining criminal defendants due to the psychiatrists' medical training and familiarity with medications.

Licensing and Certification of Court Reporters

Mike Leppert and Tom Richardson both discussed the need for certifying and requiring continuing professional development of court reporters. They reported that 28 states currently have mandatory licensure/certification and that 9 states participate in a voluntary certification process.

Judgment Dockets

Lilia Judson, Executive Director of the Division of State Court Administration of the Indiana Supreme Court, described:

- The contents of the judgement docket.
- The problems presented to the users of judgment dockets.
- The efforts of the Records Management Committee to identify some potential solutions.

Ray Ontko, President of Doxpop:

- Discussed the need for minor changes to current law concerning judgment dockets.
- Demonstrated a judgment-oriented search function that illustrates how an electronic judgment docket could appear to end users who are customers of Doxpop.
- Cautioned that the legislature is the appropriate branch of government for determining what should and should not be in the judgment docket.

Adoption Proceedings

Judges Mary Willis, Henry Circuit Court, and Marilyn Moores, Marion Superior Court, described to the Commission some of the issues concerning adoption proceedings when an adoption proceeding for a child and the termination of the rights of the child's birth parents are occurring at the same time.

V. COMMITTEE FINDINGS AND RECOMMENDATIONS

The Commission made the following recommendations:

- (1) The Commission recommends that legislation should be enacted to amend IC 31-19-11-6 concerning petitions for adoption to read: "The court may not hear and grant a petition for adoption if an appeal of a decision regarding the termination of the parent-child relationship is pending."
- (2) The Commission recommends PD 3003 which allows the judge of the Vanderburgh Circuit Court to appoint a second full-time magistrate.
- (3) The Commission recommends PD 3226, which provides that the law making all records of a juvenile court confidential does not apply to records involving proceedings that pertain to: (a) paternity issues; (b) custody issues; (c) parenting-time issues; (d) child support issues; or (e) other related issues; concerning a child born to parents who are not married to each other. PD 3226 also provides that the law that specifies which persons may have access to juvenile court records without a court order does not apply to records involving proceedings that pertain to: (a) paternity issues; (b) custody issues; (c) parenting-time issues; (d) child support issues; or (e) other related issues; concerning a child born to parents who are not married to each other.
- (4) The Commission recommends that legislation be introduced that would permit courts to have the flexibility to appoint psychologists, psychiatrists or physicians in insanity defense cases without regard to a specific ratio of qualified mental health professionals. The Commission did not recommend specific language.

WITNESS LIST

- 1. Melissa Avery, Chairperson of the Indiana State Bar Association's Family Law Section
- 2. Tom Barbera, Ph.D.
- 3. Ken Campbell, Sheriff, Boone County
- 4. Judge David Certo, Marion County Superior Court
- 5. Rick Cockrum, representing the Lake County Council
- 6. Jim Degan, Bail Agent
- 7. Hon. Robert Freese, Hendricks Superior Court # 1
- 8. Tom Frohman, an Indiana Legal Services attorney
- 9. Lilia Judson, Executive Director of the Division of State Court Administration
- 10. Hon. David Kiely, Vanderburgh County Circuit Court
- 11. Mike Leppert
- 12. Pat McGuffey, representing the Indiana Psychological Association
- 13. Hon. Marilyn Moores, Marion County Superior Court, Juvenile Division
- 14. Ray Ontko, President of Doxpop
- 15. George Parker, M.D.
- 16. Tom Richardson
- 17. Barbara Roach, Barbara Roach Bail Bonds
- 18. Sen. Earline Rogers
- 19. Steven Ross, Psy.D.
- 20. Judge Marc Rothenberg, Marion County Superior Court
- 21. Les Sebring, United Surety Agents Inc.
- 22. Lee Sexton, President American Bonding Company
- 23. Herb Smith, Express Bail Bonds Inc.
- 24. Kevin Watkins, Bail Agent
- 24. Hon. Heather Welch, Marion County Superior Court
- 26. Mike Whitlock, American Surety Company
- 27. Hon. Mary Willis, Henry County Circuit Court